IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 482 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
NALIN D BHATT - Respondent(s)

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Appearance :
MR IM PANDYA ASST.GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
Respondent is absent though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/06/2007

ORAL JUDGMENT

1. Mr.I.M. Pandya, learned Assistant Government Pleader for the petitioners. None for the respondent though served.

2. The State Government, being aggrieved by the order

dtd.26/11/1998 passed by the Labour Court, Rajkot in Recovery Application No.1702 of 1978 filed under sec.33-C-2 of the Industrial Disputes Act, 1947 ("the Act" for short), is before this Court.

3. Placing reliance upon a Judgement of the Supreme Court in case of State of U.P. Vs. Bri Nath Misra, (2005) 8 S.C.C. 58, it is submitted by the learned Assistant Government Pleader for the State that unless the rights of the respondents were adjudicated by a competent Labour Court, the Labour Court in proceedings under sec.33-C-2 of I.D. Act could not record a finding that there was no dispute regarding pre-existing rights or a benefit and the Labour Court could not issue directions under sec.33-C-2 of the Act.

4. It is to be noted that the respondent who was working in Employees State Insurance Corporation had approached the Court of Joint Civil Judge (SD), Rajkot in Civil Suit No.793 of 1972. The suit was finally decreed on 31/1/1975 with directions that the termination of the plaintiff – present respondent, was illegal, he could be deemed to be continued in service without any break, the

plaintiff would be entitled to recover salary at the rate of 537=00 per month along with allowances for the period between 26/10/1970 to 24/11/1970. The Court, however, dismissed the suit for the period between 25/11/1970 and the date of the suit.

5. The Court also directed that the salary for the period when the suit was pending, shall be paid along with all benefits etc. to the plaintiff and the plaintiff would be entitled to benefit of seniority, scale etc. The said judgement was challenged by the plaintiff – present respondent before the District Judge, Rajkot in Civil Appeal No.54 of 1975, the appeal was allowed with a direction that the claim for the salary and allowances for the period from 25/11/1970 would also stand decreed.

6. Mr.Pandya, learned Assistant Government Pleader for the State is unable to make a statement that whether the decree passed by the learned Civil Judge (SD), Rajkot was ever challenged or the decree as modified by the learned appellate court was ever challenged by the State.

7. It appears that despite the decree, the State Government

did not pay the amount to the respondent, therefore, the respondent made an application under sec.33-C-2 of the Act. The State contested the application tooth and nail and submitted that such application was not maintainable. The learned Labour Court, after hearing the parties, held that the present was a case where the liability of present petitioners was indisputable, the Labour Court, accordingly, allowed the application with a direction to the State to make the payment. Being aggrieved by the said directions dtd.26/11/1998, the petitioners are before this Court.

8. Present is a petition under Article 227 of the Constitution of India, because, the petitioners are asking this Court to exercise its power of superintendence over the subordinate court with a submission that the order passed by the court below is bad in law.

9. In the matter of State of U.P. (supra), the Supreme Court has observed that if a right is already adjudicated upon and if the pre-existing rights and benefits can be converted in terms of money, then an application under sec.33-C-2 of the Act would be maintainable.

10.In the present case, undisputedly, rights of the original claimant - present respondent have already been adjudicated upon and a decree has been made in favour of the claimant. The basic requirement to have a pre-existing right, in the opinion of this Court, does exist in the present case. The State Government does not say that in execution of the decree, they were not answerable to make the payment. If the liability of the State Government is already determined and the money has not been paid by them, then, they cannot be allowed to say that the rights were not adjudicated or there does not exist a pre-existing right.

11.On the merits, I do not think that this Court is required to make any interference in the matter under Article 227 of the Constitution of India.

12.Mr.Pandya, learned Assistant Government Pleader, however, submits that present petitioners have deposited the entire decreetal amount before the learned Civil Court, therefore, the orders could not have been passed by the learned Labour Court. In the opinion of this Court,

from the order passed by the learned Labour Court, it does not appear that such an issue was ever raised before the the said Labour Court. Even otherwise, if the entire liability had already been discharged by the petitioners, then, they can always approach the Labour Court and say that the entire monetary liability has been discharged, therefore, the proceedings / execution of the order made under sec.33-C-2 of the Act be dropped.

13. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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